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IN THE

Supreme Court of the United States

October Term, 1960

NO. 478

EMMETT HORTON, *Petitioner*

v.

LIBERTY MUTUAL INSURANCE COMPANY,
Respondent

BRIEF FOR THE RESPONDENT

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NO. 478

EMMETT HORTON, *Petitioner*

v.

LIBERTY MUTUAL INSURANCE COMPANY,
Respondent

BRIEF FOR THE RESPONDENT

Statement of the Nature of the Case and Result Below

Petitioner, alleging that he sustained total and permanent disability resulting from an accidental injury while employed by the American Bridge Division of United States Steel Corporation in Orange County, Texas, filed his claim before the Texas Industrial Accident Board claiming that respondent, the insurer for his employer, owed him $14,035.

The Board entered an award of $1,050, and Respondent duly filed suit in the United States District Court, Eastern District of Texas, seeking to be relieved of the claimed liability of $14,035 asserted by Horton.

Jurisdiction was based upon the diversity statute (28 U.S.C., § 1332).

After suit was brought, Horton moved to dismiss, and also filed a counterclaim for $14,035 alleging total permanent disability. The counterclaim was filed "subject to" the motion to dismiss.

One week after this suit was filed, Horton also brought suit in the District Court of Orange County, Texas, against respondent for $14,035, alleging total permanent disability from the same injury.

The U. S. District Court dismissed the action on the ground that less than $10,000 was involved between the parties, and the U. S. Court of Appeals for the Fifth Circuit reversed the District Court and ordered the cause reinstated. 275 F. 2d 148. Petitioner sought certiorari to review that action.

RESPONDENT'S COUNTERPOINTS

First Counterpoint

Jurisdiction is present in this case because respondent brought suit to be relieved of a liability of $14,035 as claimed by petitioner, and this claimed liability is the true amount in controversy.

Second Counterpoint

Jurisdiction is present because petitioner voluntarily filed a counterclaim for more, and not less, than $10,000, and the counterclaim had independent grounds of jurisdiction to support it.

First Counterpoint Restated

Jurisdiction is present in this case because respondent brought suit to be relieved of a liability of $14,035 as claimed by petitioner, and this claimed liability is the true amount in controversy.

Argument and Authorities

There is no Federal law allowing Horton any recovery for the injury he claims he sustained in the accident in question. Those rights are afforded him by state law, Article 8306, et seq., *Revised Civil Statutes of Texas.* Pursuant to the state law he made his claim that respondent owed him $14,035 in workmen's compensation. Having asserted this claim before the appropriate board, that claim as made by him fixes forever the money value of the right he seeks to enforce, and the money value of liability from which respondent seeks relief.

Petitioner throughout his brief asserts the only relief sought is to set aside the award of $1,050. Such is not the case. This is not an appeal of an administrative board merely because petitioner says it is. The Supreme Court of Texas, in *Booth v. Texas Employers Ins. Assn.*, 123 S.W. 2d 322 (Tex. Comm. App., opinion adopted by the Supreme Court, 1938), stated:

> " . . . *The suit to set aside an award of the board is in fact a suit,* ***not an appeal.*** It is filed as any other suit is filed and when filed the subject matter is withdrawn from the board. Section 5, as amended, of Article 8307, prohibits the board from proceeding further toward the adjudication of the claim after the filing of the suit. *The trial in court is de novo, wholly without reference to what may have been decided by*

> *the board*. It is true that as conditions precedent to the filing of suit the insurer or the employer must have been notified of the injury, claim must have been filed with the board, and the board must have made a final ruling and decision (Section 4a, Article 8307), *but these requirements do not negative the fact that a suit is filed and tried, not merely an appeal taken.*" (Emphasis added.)

But by his own voluntary act, the employee fixes the money value of the right he seeks to enforce. In *Booth v. Texas Employers*, supra, the court further holds:

> "When the claim filed with the board shows the amount claimed, in dollars and cents or by statement of facts from which the amount can definitely be determined and the award of the board is less in amount than that of the claim, *the amount shown by the claim is the amount in controversy* and the suit should be filed in the court having jurisdiction of that amount." (Emphasis added.)

This, then, is the money value of the matter in controversy between the parties. Horton made his claim for $14,035, and respondent seeks to relieve itself from such claimed lia' ility. Horton's right to recover that sum, and respondent's effort to resist is the thing in controversy, the subject matter of the suit.

Petitioner seeks to reverse the decision below on the ground that Horton *might* not recover that much on a trial. This is true, but does not oust jurisdiction.

Here, respondent has had asserted against it a claim (made in good faith) by Horton that he is entitled to $14,035. By bringing suit, it seeks to resist that total claim,

and thus relieve itself of such claimed liability. Horton set the money value by filing his claim for $14,035, respondent did not.

Petitioner argues to the court that since Congress has stopped *removal* of all workmen's compensation cases to the Federal Courts because of heavy caseloads, that it therefore meant to stop the filing of original actions by insurers in such courts. If such be the case, then the words "or filed" should have been added to 28 U.S.C., Sec. 1445 (c) following:

> " . . . a civil action in any State Court arising under the workmen's compensation laws of such state *may not be removed*. . . . "

However persuasive the reasons for inclusion of the words "or filed" in subsection (c) of Sec. 1445, such was not done. Actually, Congressional intent must have been to leave those words out, since in the report included in petitioner's brief, p. 5 a, appendix, it is shown that while preventing *removal*, Congress was aware that in 1957 alone, over 900 original workmen's compensation actions were filed directly in the U. S. District Courts of Texas. Also, petitioner shows that during that same year of 1957, the average award of the Industrial Accident Board of Texas was less than $1,000.00 (Petitioner's brief, p. 14, F.N. 3).

In short, petitioner is trying to engraft a prohibition against the filing of a direct action because of the reasons that Congress prohibited removals. But it should not be done under the guise of Congressional intent, since Congress was aware in minute detail of the number of removals and of the number and frequency of original actions, and then chose to bar *only* removals.

Petitioner relies on the decision in *National Surety Co. v. Chamberlain,* 171 F. Supp. 591 (N. Dist. Texas 1959), in support of his contention. The *Chamberlain* case was dealt with by the Court of Appeals in a much more forceful manner than can we. But, we would point out to the court that in *Chamberlain* the *employee had brought his suit first in a Texas district court, and in the Federal Court the employee did not affirmatively seek relief by way of counterclaim.*

This court held in *Smith v. Adams*, 130 U.S. 167, 9 S. Ct. 566 (1889), 9 S. Ct. at 569:

> " . . . By a matter in dispute is meant the subject of litigation,—the matter upon which the action is brought and issue is joined, and in relation to which, if the issue be one of fact, testimony is taken. It is conceded that the pecuniary value of the matter in dispute may be determined, not only by the money judgment prayed, where such is the case, but in some cases by the increased or diminished value of the property directly affected by the relief prayed, *or by the pecuniary result to one of the parties immediately from judgment.*" (Emphasis added.)

That the money value of the right herein asserted by Horton is $14,035 should be apparent by his assertions before the Industrial Accident Board, his counterclaim in this very suit, and his subsequent suit in Orange County, Texas, (R. 27), for that same amount. For the District Court to dismiss for want of jurisdiction, it must appear as a legal certainty that *less* than $10,000 is involved between the parties.

St. Paul Mercury Indemnity Co. v. Red Cab Co., 303 U.S. 283, 58 S. Ct. 586 (1938), holds, 58 S. Ct. at 289:

> *"It must appear to a legal certainty that the claim is really for less than the jurisdictional amount to justify dismissal."* (Emphasis added.)

Further, at p. 294, although discussing removal, it is stated:

> "The claim, whether well or ill founded in fact, fixes the right of the defendant to remove, and the plaintiff ought not to be able to defeat that right and bring the cause back to the state court at his election. *If he does not desire to try his case in the federal court he may resort to the expedient of suing for less than the jurisdictional amount*, and though he would be justly entitled to more, the defendant cannot remove." (Emphasis added.)

The same rationale applies here; if Horton truly did not desire to place the sum of $14,035 in controversy between himself and respondent, he could have *claimed* less before the Board.

Aetna Casualty & Surety Company v. Flowers, 330 U.S. 464, 67 S. Ct. 798 (1947), arising under the Tennessee Workmen's Compensation law, presented the question of jurisdictional amount. There, a Tennessee court had awarded compensation in installments, the total of which were above the jurisdictional minimum but the amount of those due at the time of suit was less. On removal by the insurer, the employee-claimant resisted on the grounds that the amount in controversy was the amount of payments then due since that was the only pecuniary certainty between the parties, and any future payments were uncertain and conjectural. The court rejected this view, stating, 330 U.S. 464, at 467-8:

"If this case were one where judgment could be entered only for the installments due at the commencement of the suit . . . future installments could not be considered in determining whether the jurisdictional amount was involved, even though the judgment would be determinative of liability for future installments as they accrued. . . . But this is not that type of case. For the Tennessee *statute which creates liability for the award contemplates a single action for the determination of claimant's right to benefits and a single judgment for the award granted. . . . Nor does the fact that it cannot be known as a matter of absolute certainty that the amount which may ultimately be paid, if respondent prevails, will exceed $3,000, mean that the jurisdictional amount is lacking. This Court has rejected such a restrictive interpretation of the statute creating diversity jurisdiction.*" (Emphasis added.)

The similarity of the *Flowers* case to the case at bar is striking. In both, it is the claimed liability of the insurer as asserted by the employee that fixes the money value of the right sought to be enforced.

Very closely related to this case are the cases where suit is brought by an insurer seeking to avoid some claimed liability upon an insurance policy. In *Hartford Accident & Indemnity Co. v. Northwest National Bank*, 228 F. 2d 391 (7th Cir. 1955), the insurer sought to cancel the policy although only $405.00 was then claimed. In passing on the jurisdictional amount, the court states, 228 F. 2d 391, 402:

"There remains to be considered the contention of the Bank that the suit as to it should have been dismissed for lack of jurisdiction on the ground that the requisite amount was not involved. This conten-

> tion is based upon the Bank's theory that there was nothing in dispute between plaintiffs and it other than the sum of $405.00, which the Bank had received from the plaintiff Hartford Fire Insurance Company in payment of damages to the car . . . which by the judgment under attack the Bank was required to pay to the insurer. We think this is a misconception of the situation . . . The amount in controversy was *the value of the policy in suit, or,* perhaps more accurately stated, *the amount of the liability which plaintiffs were called upon to assume,* and not merely the amount in dispute between the plaintiffs and the Bank." (Emphasis added.)

A similar holding is found in the case of *Aetna Casualty & Surety Co. v. Yeatts,* 99 F. 2d 665 (4th Cir. 1938).

In *General Accident Fire & Life Assurance Corporation v. Mostert,* 131 F. 2d 596 (5th Cir. 1942), it was stated:

> "It is conceded that under the Texas Compensation Law, Vernon's Annotated Civil Statutes of Texas, Art. 8306, a suit to set aside an award opens up for trial de novo the claim filed with the Board; and we assume, as the parties do, that the amount here in controversy *is the largest amount that could be recovered under the claim.*" (Emphasis added.)

Petitioner argues that the case of *Chicago, Rock Island & Pacific RR Co. v. Stude,* 346 U.S. 574, is analogous and controlling here. There are many reasons why the *Stude* case is not applicable. There, under Iowa statutes, the railroad instituted eminent domain proceedings in State Court, then after an adverse decision tried to (1) *remove* to Federal Court, and (2) *appeal* the case to federal court. The railroad's position was rejected, first because only a

defendant had the right of removal; and, second, because the federal courts have no appellate jurisdiction over State proceedings.

In this case, respondent has not attempted removal. Respondent initiated this action, which is a lawsuit, not an appeal. Petitioner cannot seriously contend that when an insurer files a workmen's compensation suit it is an attempted appeal of a State administrative board, and therefore prohibits; but when an employee does precisely the same thing it is a suit with proper jurisdictions in Federal Court. Petitioner's brief shows how many direct actions have been so filed. (Pet. Brief, p. 5a) The Senate Report, (Pet. Brief, 1a), and petitioner both argue that the employee should have his choice of forums. If there is jurisdiction for one party there should be for both, and the suit is not an attempted appeal of the decision of a state administrative agency.

Second Counterpoint Restated

Jurisdiction is present because petitioner voluntarily filed a counterclaim for more, and not less, than $10,000, and the counterclaim had independent grounds of jurisdiction to support it.

Argument and Authorities

After filing a motion to dismiss, petitioner filed a counterclaim in this suit seeking affirmative relief of $14,035, alleging independent jurisdictional grounds. This was filed "subject to" the motion to dismiss. Rule 12, *Federal Rules Civil Procedure*, allows only "defenses" and "objections" to be filed "subject to" another pleading. It

is submitted that a counterclaim of more than $10,000 is not a "defense" or "objection", and thus, the filing of the counterclaim invoked jurisdiction of the court, even if it were not present.

Here, petitioner claimed respondent owed him $14,035 before the accident board, in the counterclaim, and in his Orange County suit. He was not required to counterclaim for precisely $14,035, but could have (if he did not wish to invoke the court's jurisdiction) counterclaimed for $9,990. Then, if there were no jurisdiction of the main action, he would not invoke it on independent grounds.

In *Ginsburg v. Pacific Mut. Life Ins. Co. of California*, 69 F. 2d 97, (2d Cir. 1934), the court held:

> "We need not consider the jurisdictional controversy as to the amount the appellant sues to recover because the counterclaim interposed establishes the jurisdiction of the District Court. Merchants' Heat & Light Co. v. James B. Clow & Sons, 204 U.S. 286, 27 S. Ct. 285, 51 L. Ed. 488; O. J. Lewis Mercantile Co. v. Klepner, 176 F. 343 (C.C.A. 2), certiorari denied 216 U.S. 620, 30 S. Ct. 575, 54 L. Ed. 641. It seeks a repudiation and cancellation of a policy of insurance which involves a valuation of more than the $3,000. In Home Life Insurance Co. v. Sipp, 11 F. (2d) 474, the Third Circuit Court of Appeals held that where the counterclaim pleaded involved less than $3,000, it did not give jurisdiction, where the complaint also involved less than the required jurisdictional amount. But in the instant case, if the appellee succeeded, it would cancel a contract obligation of more than the requisite amount."

In *Isenberg v. Biddle*, 125 F. 2d 741 (D.C. App. 1941), the court said:

"As to the first, counsel insists that when the bill of complaint was dismissed, 'the keystone of the District Court's jurisdiction fell and the counterclaim should have been dismissed with the bill'. . . . Though it is suggested by Professor Shulman that it is implicit in the case that, if a plaintiff's action is dismissed for want of jurisdiction, the counterclaim falls, he adds that this is so only if there is no independent jurisdictional basis for the counterclaim. 45 Yale L. J. 393, 413. Here there is such independent basis, and the rule is that in such circumstances, when the counterclaim seeks affirmative relief, it is sustainable without regard to what happens to the original complaint. Lion Mfg. Corp. v. Chicago Flexible S. Co., 7 Cir., 106 F. 2d 930, 933; Vidal v. South American Securities Co., 2 Cir., 276 F. 855, 874; Jackson v. Simmons, 7 Cir., 98 F. 768. In the Jackson case the Court of Appeals of the Seventh Circuit said: 'But a cross bill which seeks affirmative relief is in the nature of an original bill wherein the cross complainant is the actor. Such a cross bill is not dependent upon the original bill, is not subject to the control of the complainant in the original bill, and does not fall with the dismissal of the original bill, whether that dismissal be the act of the complainant or the act of the court.' 98 F. page 773. And see also Buffalo Specialty Co. v. Vancleef, D. C., 217 F. 91."

Professor Moore states, in 3 *Moore's Federal Practice* 41, ¶ 13.15:

"If the plaintiff's claim is dismissed for lack of federal jurisdiction it must follow, of course, that a counterclaim must be dismissed also, *unless it had independent grounds of jurisdiction to support it.*

". . . Complementing this line of decision are cases which hold that although the original claim involves less than the jurisdictional amount, *federal*

> *jurisdiction can be sustained if the counterclaim (of the compulsory type) exceeds the jurisdictional amount;* and there are cases taking the view that the amounts involved in the original claim and counterclaim may be aggregated to make up the jurisdictional amount."

See also *Pioche Mines Consol., Inc., et al. v. Fidelity-Philadelphia Trust Co., et al.*, 206 F. 2d 336 (9th Cir. 1953, cert. den. 346 899); *Haberman v. Equitable Life Assurance Soc. of U. S.*, 224 F. 2d 301 (5th Cir. 1955, cert. den. 350 U.S. 948); *Lion Mfg. Co. v. Chicago Flexible Shaft Co.*, 106 F. 2d 930 (7th Cir. 1939); *Vidal v. South American Securities Co.*, 276 F. 855 (2d Cir. 1922); *Home Life Insurance Co. v. Sipp*, 11 F. 2d 474 (3rd Cir., 1926); *Roberts Min. and Mill Co. v. Schrader*, 95 F. 2d 522 (9th Cir., 1938); *Switzer Brothers v. Chicago Cardboard Co.*, 252 F. 2d 407 (7th Cir., 1958).

Respondent respectfully submits that a counterclaim for more than the jurisdictional amount, alleging independent jurisdictional grounds (R. pp. 14-19) is not such a "defense" or "objection" which is permissible under Rule 12, *Federal Rules Civil Procedure*, and petitioner invoked the jurisdiction of the court by filing it.

Conclusion

The matter in controversy and the issue here litigated is the right of respondent to be free from the claimed liability asserted against it by petitioner, upon which he placed a money value of $14,035. The suit by respondent is a suit, not merely an appeal, and the thing to be litigated in that suit is Horton's claim of $14,035, not an award of $1,050.

The right he seeks to enforce is given him by Texas, not Federal law. The Supreme Court of Texas, and the U. S. Court of Appeals many times have held the money value of that right and the money value of the claimed liability of the insurer is the maximum amount sought by the employee before the Industrial Accident Board. The decision below was correct, it should be affirmed.

Respectfully submitted,

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This is to certify that a true copy of the foregoing brief has been served on Petitioner's counsel, Joe H. Tonahill, P. O. Box 179, Jasper, Texas, and William VanDercreek, 3315 Daniels, Dallas 5, Texas, by depositing the same in the United States Mail with first class postage prepaid properly addressed.

/s/ Major T. Bell
MAJOR T. BELL

SUPREME COURT OF THE UNITED STATES

No. 478.—October Term, 1960.

Emmett Horton, Petitioner, v. Liberty Mutual Insurance Co. | On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.

[June 12, 1961.]

Mr. Justice Black delivered the opinion of the Court.

This case raises questions under that part of 28 U. S. C. § 1332, as amended in 1958,[1] which grants jurisdiction to United States District Courts of all civil actions between citizens of different States "where the matter in controversy exceeds the sum or value of $10,000, exclusive of interest and costs . . . ."

Petitioner, Horton, was injured while working for an employer in Texas insured by the respondent, Liberty Mutual Insurance Company. Pursuant to the Texas Workmen's Compensation Law,[2] petitioner filed a claim with the Texas Industrial Accident Board against his employer and the respondent insurance company alleging that he had been totally and permanently incapacitated and claiming the maximum recovery under the law of $35 per week for 401 weeks, or a total of $14,035. After administrative hearings the Board decided that petitioner would be disabled for only 30 weeks and accordingly made an award of only $1,050. Section 5 of Art. 8307 of the Texas Workmen's Compensation Law permits either the employee or the insurance company, if dissatisfied with an award, to "bring suit in the county where the injury occurred to set aside said final ruling," in which event the

[1] Act of July 25, 1958, 72 Stat. 415.

[2] Vernon's Tex Ann. Civ. Stat., Arts. 8306–8309.

issues shall be determined "upon trial de novo, and the burden or [*sic*] proof shall be upon the party claiming compensation," but in no event shall the court allow recovery in excess of the statutory maximum of $14,035. Acting under this provision of state law, the respondent, on April 30, 1959, the very day of the award, filed this diversity case in the United States District Court to set aside the award, alleging that petitioner had claimed, was claiming and would claim $14,035, but denying that petitioner was entitled to recover anything at all under Texas law. One week later the petitioner, who also was dissatisfied with the award, filed an action in the state court to set aside the Board's award and to recover in that court the full $14,035. After that, petitioner moved to dismiss the respondent's federal court suit on the ground that the value of the "matter in controversy" was only the amount of the award, $1,050, and not the amount of his claim of $14,035, although he also contemporaneously filed, subject to his motion to dismiss, what he designated as a compulsory counterclaim [3] for the full amount he had claimed before the Texas Board and in his Texas State Court suit. The District Court held that the "matter in controversy" in the federal action was only the amount of the $1,050 award that the respondent company had asked the court to set aside. In so holding the District Court relied on *National Surety Corp.* v. *Chamberlain*,[4] in which another District Court in Texas had reached the same conclusion as to jurisdiction largely on the basis of what it deemed to have been the purpose of Congress in enacting the 1958 amendment to 28 U. S. C. § 1332, which amendment rather severely cut down the jurisdiction of Federal District

[3] With exceptions not here relevant, Rule 13 (a) of the Federal Rules of Civil Procedure requires a party to file a counterclaim arising out of the transaction or occurrence that is the subject of the opposing party's claim.

[4] 171 F. Supp. 591.

Courts, particularly in state workmen's compensation cases. The Court of Appeals reversed,[5] and we granted certiorari to decide the important jurisdictional questions raised under the 1958 amendment.[6]

For reasons to be stated, we hold that the District Court has jurisdiction of the controversy.

First. It is true, as the *Chamberlain* opinion pointed out, that the purpose and effect of the 1958 amendment was to reduce congestion in the Federal District Courts partially caused by the large number of civil cases that were being brought under the long-standing $3,000 jurisdictional rule. This effort to reduce District Court congestion followed years of study by the United States Judicial Conference and the Administrative Office of the United States Courts, as well as by the Congress.[7] To accomplish this purpose the 1958 amendment took several different but related steps. It raised the requisite jurisdictional amount from $3,000 to $10,000 in diversity and federal question cases; it provided that a corporation is not only to be deemed a citizen of the State by which it was incorporated but also of the State where it has its principal place of business; and, most importantly here, it also for the first time forbade the *removal* of state workmen's compensation cases from state courts to United States District Courts. By granting district judges a discretionary power to impose costs on a federal court plaintiff if he should "recover less than the sum or value

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[5] 275 F. 2d 148.

[6] 364 U. S. 814.

[7] See H. R. Rep. No. 1706, 85th Cong., 2d Sess.; S. Rep. No. 1830, 85th Cong., 2d Sess.; Hearings on H. R. 2516 and H. R. 4497, Subcommittee of House Committee on the Judiciary, 85th Cong., 1st Sess. With particular reference to the provision barring removal of state workmen's compensation cases, see 104 Cong. Rec. 12689–12690; S. Rep. No. 1830, *supra*, p. 9; Annual Report of the Proceedings of the Judicial Conference of the United States, 1957, p. 15.

of $10,000," the amendment further manifested a congressional purpose to discourage the trying of suits involving less than $10,000 in federal courts. In discussing the question of state workmen's compensation cases, the Senate Report on the amendment evidenced a concern not only about the problem of congestion in the federal courts, but also about trial burdens that claimants might suffer by having to go to trial in federal rather than state courts due to the fact that the state courts are likely to be closer to an injured worker's home and may also provide him with special procedural advantages in workmen's compensation cases.[8]

The foregoing are some of the appealing considerations that led the District Court to conclude that it would frustrate the congressional purpose to permit insurers to file workmen's compensation suits in federal courts when Congress had deliberately provided that such suits could not be removed to federal courts if filed by claimants in state courts. But after the most deliberate study of the whole problem by lawyers and judges and after its consideration by lawyers on the Senate Judiciary Committee in the light of statistics on both removals and original filings,[9] Congress used language specifically barring removal of such cases from state to federal courts and at the same time left unchanged the old language which just as specifically permits civil suits to be filed in federal courts in cases where there are both diversity of citizenship and the prescribed jurisdictional amount. In this situation we must take the intent of Congress with regard to the filing of diversity cases in Federal District Courts to be that which its language clearly sets forth. Congress could very easily have used language to bar filing of workmen's compensation suits by the insurer as well as removal of such suits, and it could easily do so still. We therefore

[8] S. Rep. No. 1830, 85th Cong., 2d Sess., pp. 8–9.

[9] See, *id.*, p. 8.

hold that under the present law the District Court has jurisdiction to try this civil case between citizens of different States if the matter in controversy is in excess of $10,000.

Second. We agree with petitioner that determination of the value of the matter in controversy for purposes of federal jurisdiction is a federal question to be decided under federal standards,[10] although the federal courts must, of course, look to state law to determine the nature and extent of the right to be enforced in a diversity case. It therefore is not controlling here that Texas has held that the crucial factor for allocating its cases among different state courts on an amount-in-controversy basis is the amount originally claimed before its State Compensation Board.[11]

The general federal rule has long been to decide what the amount in controversy is from the complaint itself, unless it appears or is in some way shown that the amount stated in the complaint is not claimed "in good faith."[12] In deciding this question of good faith we have said that it "must appear to a legal certainty that the claim is really for less than the jurisdictional amount to justify dismissal."[13] The complaint of the respondent company filed in the District Court, while denying any liability at all and asking that the award of $1,050 against it be set aside, also alleges that petitioner Horton has claimed, now claims and will claim that he has suffered total and permanent disability and is entitled to a maximum recovery of

[10] See, *e. g.*, *Shamrock Oil Corp.* v. *Sheets*, 313 U. S. 100, 104.

[11] *Booth* v. *Texas Employers' Ins. Assn.*, 132 Tex. 237, 252, 123 S. W. 2d 322, 331.

[12] *St. Paul Mercury Indemnity Co.* v. *Red Cab Co.*, 303 U. S. 283, 288, and cases there cited.

[13] *Id.*, at 289. See also *Bell* v. *Preferred Life Assurance Society*, 320 U. S. 238, 240; *Aetna Casualty Co.* v. *Flowers*, 330 U. S. 464, 468.

$14,035, which, of course, is in excess of the $10,000 requisite to give a federal court jurisdiction of this controversy. No denial of these allegations in the complaint has been made, no attempted disclaimer or surrender of any part of the original claim has been made by petitioner, and there has been no other showing, let alone a showing "to a legal certainty," of any lack of good faith on the part of the respondent in alleging that a $14,035 claim is in controversy. It would contradict the whole record as well as the allegations of the complaint to say that this dispute involves only $1,050. The claim before the Board was $14,035; the state court suit of petitioner asked that much; the conditional counterclaim in the federal court claims the same amount. Texas law under which this claim was created and has its being leaves the entire $14,035 claim open for adjudication in a *de novo* court trial, regardless of the award. Thus the record before us shows beyond a doubt that the award is challenged by both parties and is binding on neither; that petitioner claims more than $10,000 from the respondent and the respondent denies it should have to pay petitioner anything at all. No matter which party brings it into court, the controversy remains the same; it involves the same amount of money and is to be adjudicated and determined under the same rules. Unquestionably, therefore, the amount in controversy is in excess of $10,000.

Third. Petitioner contends, however, that even though the amount in controversy is more than $10,000, the suit filed by the company is nothing more than an appeal from a state administrative order, that a Federal District Court has no appellate jurisdiction and that the dismissal of the case by the District Court therefore is supportable on that ground. This contention rests almost entirely on *Chicago, R. I. & P. R. Co.* v. *Stude*, 346 U. S. 574, 581, which held that a United States District Court was without jurisdiction to consider an appeal "taken administra-

tively or judicially in a state proceeding." Aside from many other relevant distinctions which need not be pointed out, the *Stude* case is without weight here because, as shown by the Texas Supreme Court's interpretation of its compensation act:

> "The suit to set aside an award of the board is in fact a suit, not an appeal. It is filed as any other suit is filed and when filed the subject matter is withdrawn from the board."[14]

It is true that as conditions precedent to filing a suit a claim must have been filed with the Board and the Board must have made a final ruling and decision. But the trial in court is not an appellate proceeding. It is a trial *de novo* wholly without reference to what may have been decided by the Board.[15]

The Court of Appeals was right in holding that the District Court had jurisdiction of this case and its judgment is

Affirmed.

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[14] *Booth* v. *Texas Employers' Ins. Assn.*, 132 Tex. 237, 246, 123 S. W. 2d 322, 328.

[15] The character of the lawsuit is further illuminated by decisions of the Texas Supreme Court holding that the administrative award becomes vacated and unenforceable once the court has acquired jurisdiction of the cause and the parties even if a voluntary nonsuit is taken and the case dismissed without judgment on the merits. *Zurich General Accident Co.* v. *Rodgers*, 128 Tex. 313, 97 S. W. 2d 674; *Texas Reciprocal Ins. Assn.* v. *Leger*, 128 Tex. 319, 97 S. W. 2d 677. This makes it all the more clear that the matter in controversy between the parties to the suit is not merely whether the award will be set aside since the suit automatically sets it aside for determination of liability *de novo*.

SUPREME COURT OF THE UNITED STATES

No. 478.—October Term, 1960.

Emmett Horton, Petitioner, v. Liberty Mutual Insurance Co. | On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.

[June 12, 1961.]

Mr. Justice Clark, with whom The Chief Justice, Mr. Justice Brennan and Mr. Justice Stewart join, dissenting.

The Court turns a new furrow in the field of diversity jurisdiction today and, in so doing, plows under a rule of almost a quarter of a century's standing—the rule that in determining jurisdiction, "the sum claimed by the plaintiff controls if the claim is apparently made in good faith." *St. Paul Indemnity Co.* v. *Red Cab Co.*, 303 U. S. 283, 288 (1938). Here the respondent Insurance Company filed suit "to set aside" an award of $1,050 given Horton by the Texas Industrial Accident Board. The Court, instead of testing the jurisdictional amount by this sum, looks instead to allegations of the Insurance Company that Horton, the defendant in the action, "*will claim* the sum of $14,035 . . . ." This is the first time the Court has let a plaintiff affix jurisdiction by prophesying what the defendant would or might claim, rather than by stating what the plaintiff itself did claim. In so generously construing the statute, the Court confounds the test heretofore applied in diversity cases. It also nullifies the result of "years of study by the United States Judicial Conference and the Administrative Office of the United States Courts, as well as by the Congress," *ante*, p. —, in the adoption of the Act of July 25, 1958, 72 Stat. 415, increasing the jurisdictional amount in diversity cases to $10,000. Once again the United States District Courts in Texas will

be flooded by compensation cases,[1] and the Congress once again will be obliged to amend the diversity statute. Moreover, today's decision practically wipes out the long-existing distinction between declaratory judgment actions and conventional suits. See 28 U. S. C. § 2201. For these reasons I must dissent.

Petitioner, an injured workman, filed a claim under the Texas Workmen's Compensation Act before the Texas Industrial Accident Board for the maximum allowable recovery, $14,035 (401 weeks at $35 per week). The Board, after a hearing, awarded petitioner $1,050 ($35 per week for 30 weeks). Within hours of the award, respondent, the compensation insurer, literally raced into Federal District Court and filed suit to set aside the Board's decision. The diversity action was brought pursuant to Vernon's Tex. Ann. Civ. Stat., Art. 8307, § 5, which allows the issues to be determined "upon trial de novo, [where] . . . the burden or [*sic*] proof shall be upon the party claiming compensation." Upon petitioner's motion, the District Court dismissed the action for lack of jurisdiction. The Court of Appeals reversed.

The jurisdictional limits of Federal District Courts are bounded on one side by the Constitution and on the other by the enactments of Congress. Only that judicial power expressly granted by statute may be exercised by the *nisi prius* courts. *Lockerty* v. *Phillips*, 319 U. S. 182 (1943); *Kline* v. *Burke Construction Co.*, 260 U. S. 226 (1922); *Sheldon* v. *Sill*, 8 How. 441 (1850). In the light of such history, this Court has repeatedly held that such jurisdiction is to be narrowly interpreted. "The policy of the [diversity] statute calls for its strict construction." *Healy* v. *Ratta*, 292 U. S. 263, 270 (1934). See *Indianapolis* v. *Chase National Bank*, 314 U. S. 63 (1941); *St. Paul Indemnity Co.* v. *Red Cab Co.*, *supra*.

[1] In 1957, 2,147 workmen's compensation cases were commenced in the United States District Courts of Texas. S. Rep. No. 1830, 85th Cong., 2d Sess. 8.

The argument that the federal court, in diversity cases, is just another state court is inapposite here. As the Court points out, the determination of whether a case comes within the jurisdiction of a District Court "is a federal question to be decided under federal standards." *Ante*, p. —. The jurisdictional statute, "which is nationwide in its operation, was intended to be uniform in its application, unaffected by local law definition or characterization of the subject matter to which it is to be applied." *Shamrock Oil Co.* v. *Sheets*, 313 U. S. 100, 104 (1941). Regardless of the method used by the Texas courts to determine the jurisdictional amounts for such cases, we must scrupulously apply the standard set by Congress for federal courts.

The statute conferring jurisdiction on District Courts in suits between parties of diverse citizenship limits it to those actions "where the matter in controversy exceeds the sum or value of $10,000, exclusive of interests and costs . . . ." 28 U. S. C. § 1332 (a). In most cases, the determination of the amount in controversy is exceedingly simple, *e. g.*, liquidated damages. However, where the relief sought is difficult to define in terms of money, or is of differing value to the parties, the statute does not admit of ready application. To clarify these situations, this Court, in *St. Paul Indemnity Co.* v. *Red Cab Co.*, *supra*, at 288, stated: "[U]nless the law gives a different rule, *the sum claimed by the plaintiff controls* if the claim is apparently made in good faith." (Emphasis added.)

The application of the foregoing rules to the problem here results in a simple solution. At the time respondent filed its complaint, there was enforceable against it a liability in the amount of $1,050. If petitioner defaulted, the District Court would set aside the Board award. If respondent lost and petitioner filed no counterclaim, the judgment could only be for $1,050. It is only if petitioner counterclaims for an amount in excess of the jurisdictional amount of $10,000, that respondent may

controvert a claim cognizable in federal court. It seems impossible to avoid the conclusion that the Court is allowing diversity jurisdiction to be predicated upon a counterclaim which might possibly be filed by petitioner. "Even a "disclaimer or surrender of [a] . . . part of the original claim" would not change the Court's insistence upon looking to the alleged counterclaim if that were more than the respondent's claim, for the jurisdictional minimum. Apparently the Court would require a "denial of these allegations" that petitioner will claim an amount in excess of the jurisdictional limit before considering the respondent's prayer to set aside the Board's award as the source of the jurisdictional amount. *Ante*, p. —. Not only is this in patent conflict with *St. Paul Indemnity Co.* v. *Red Cab Co., supra*, but it distorts the meaning of Rule 3, Federal Rules of Civil Procedure, which states, "[a] civil action is commenced by filing a complaint with the court." Here the Court evidently holds that if the complaint, insufficient to meet the jurisdictional standards, alleges that a possible compulsory counterclaim, sufficient to meet such standards, may be filed by the defendant, federal jurisdiction attaches. Certainly we have never permitted a District Court to acquire jurisdiction under 28 U. S. C. § 1331 (a) [2] where the plaintiff does not allege a federal question but claims that the defendant will raise such an issue. "[W]hether a case is one [involving a federal question] . . . must be determined from what necessarily appears in the plaintiff's statement of his own claim in the bill or declaration, *unaided by anything alleged in anticipation of avoidance of defenses which it is thought the defendant may interpose.*" *Taylor* v. *Anderson*, 234 U. S. 74, 75–76 (1914).

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[2] "The district courts shall have original jurisdiction of all civil actions wherein the matter in controversy exceeds the sum or value of $10,000 exclusive of interest and costs, and arises under the Constitution, laws, or treaties of the United States."

(Emphasis added.) See *Skelly Oil Co.* v. *Phillips Petroleum Co.*, 339 U. S. 667 (1950); *First National Bank* v. *Williams*, 252 U. S. 504 (1920); *Louisville & N. R. Co.* v. *Mottley*, 211 U. S. 149 (1908). To allow such a procedure in diversity cases is to unbalance the entire jurisdictional pattern.

In essence, the Court has permitted respondent to turn its suit into an action for a declaratory judgment without meeting the requirements of the Declaratory Judgment Act. 28 U. S. C. § 2201. That Act provides that "[i]n a case of actual controversy within its jurisdiction . . . any court of the United States, *upon the filing of an appropriate pleading, may declare* the rights and other legal relations of any interested party seeking such declaration . . . ." (Emphasis added.)

The complaint filed in the District Court was not styled a declaratory judgment action, and it did not seek such relief. More importantly, respondent has succeeded in avoiding the element of discretion permitted by the statute. See *Brillhart* v. *Excess Ins. Co.*, 316 U. S. 491 (1942). Declaratory relief is a procedural remedy and, therefore, the construction of the Act is a federal matter. See *Aetna Life Ins. Co.* v. *Haworth*, 300 U. S. 227 (1937). Whether or not such relief should be granted does not depend upon whether the state courts would exercise their discretion to grant a declaratory judgment in the same situation.[3] Differing factors are pertinent to the discretionary decisions of the two separate judicial systems.

[3] The argument that the suit here is not really one to set aside the Board award (because the moment it was filed that award was voided and the suit is, in reality, a new proceeding in which the workman must establish liability), when coupled with the result here, leads to the total abandonment of the rule of *St. Paul Indemnity Co.* v. *Red Cab Co.*, 303 U. S. 283 (1938). It would permit jurisdiction to be established by the plaintiff's allegation that at some prior time the defendant had claimed, even if only extrajudicially, an amount equal to the jurisdictional minimum.

state and federal. In the latter system, discretionary refusal to entertain the action frequently occurs when the suit involves a state statute, such as the one here. See *Federation of Labor* v. *McAdory*, 325 U. S. 450 (1945). Moreover, it is even questionable whether respondent has satisfied the jurisdictional amount requirement for such actions. See *Travelers Ins. Co.* v. *Greenfield*, 154 F. 2d 950; *New York Life Ins. Co.* v. *Greenfield*, 154 F. 2d 953; *Commercial Casualty Ins. Co.* v. *Fowler*, 154 F. 2d 884; *Mutual Life Ins. Co.* v. *Moyle*, 116 F. 2d 434. That the Declaratory Judgment Act in no way affects the jurisdictional requirements for federal courts is clear. "To sanction suits for declaratory relief as within the jurisdiction of the District Courts merely because . . . artful pleading anticipates a defense based on federal law would contravene the whole trend of jurisdictional legislation by Congress, disregard the effective functioning of the federal judicial system and distort the limited procedural purposes of the Declaratory Judgment Act." *Skelly Oil Co.* v. *Phillips Petroleum Co.*, *supra*, at 673–674.

Finally, today's decision effectively emasculates the recent congressional attempt to limit diversity jurisdiction, especially in workmen's compensation cases. In order to decrease "the workload of the Federal courts" which "has greatly increased because of the removal of workmen's compensation cases from the State courts to the Federal courts" the Judicial Conference of the United States urged the passage of the current legislation. S. Rep. No. 1830, 85th Cong., 2d Sess. 7. Workmen's compensation cases were singled out and specifically dealt with because they "arise and exist only by virtue of State laws. No Federal question is involved and no law of the United States is involved in these cases." *Id.*, at 8. To accomplish the desired result of restricting federal diversity jurisdiction, Congress raised the minimum jurisdic-

tional amount from $3,000 to $10,000. Corporations were deemed citizens of more than one state and removal of workmen's compensation cases to federal courts was forbidden.

To further limit the number of diversity cases, the Congress enacted 28 U. S. C. § 1332 (b), which provides that

> "where the plaintiff who files the case originally in the Federal courts is finally adjudged to be entitled to recover less than the sum or value of $10,000, *computed without regard to any . . . counterclaim to which the defendant may be adjudged to be entitled,* . . . the district court . . . may impose costs on the plaintiff." (Emphasis added.)

This provision makes little sense when applied to the result now approved by the Court. If respondent were to obtain the relief it sought, namely, to have the Board's award of less than $10,000 "vacated, set aside, voided and declared to be of no further force and effect," it is clear that costs could be assessed against it under § 1332 (b). This produces an anomalous situation which the Court must implicitly approve. Respondent has no hope of avoiding possible liability under the cost sanction of § 1332 (b). This is so because the relief it obtains must be measured against the jurisdictional minimum "without regard" for Horton's possible counterclaim. We are therefore left with the strange result that while respondent has met the requirements of § 1332 (a), yet under § 1332 (b), it will be liable for costs for failing to meet the same requirements.

Moreover, the Senate Report expressed concern for the problems of the injured employee in federal court,

> "[S]ome of these State [workmen's compensation] statutes limit the venue to the place where the accident occurred or to the district of the workman's residence. When removed to the Federal court the

> venue provisions of the State statute cannot be applied. Very often cases removed to the Federal courts require the workman to travel long distances and to bring his witnesses at great expense. This places an undue burden upon the workman and very often the workman settles his claim because he cannot afford the luxury of a trial in Federal court." S. Rep. No. 1830, 85th Cong., 2d Sess. 9.

While 28 U. S. C. § 1332 does not specifically prohibit the filing of original workmen's compensation cases, a clearer expression of congressional dislike for saddling federal courts with such cases could hardly be imagined. We should, therefore, give effect to this policy wherever possible. Not only does the decision today fail to do this, but the Court goes out of its way to defeat the congressional intent. The statement that "the workman has the option to file his case in either the Federal or the State court," S. Rep. No. 1830, 85th Cong., 2d Sess. 9, is no longer correct. It is now an unequal race to the courthouse door—a race which the insurers will invariably win, since they have resident counsel in Austin (the location of the Texas Industrial Accident Board) who quickly secure news of Board awards and are thus enabled to "beat" the workman in the choice of forums. Thus, the Court—contrary to the specifically expressed intention of the Congress—grants the insurance companies the option of going into federal court, with all its attendant difficulties to the already over-burdened federal judiciary and the impecunious workman. We thought differently in 1957, when we refused to "read legislation with a jaundiced eye," saying that "it will not do for us to tell the Congress 'We see what you were driving at but you did not use choice words to describe your purpose.'" *United States* v. *Union Pacific R. Co.*, 353 U. S. 112, 118. Congress closed the back door and locked it tight in 1958, only to have the Court break down the front door today and hang out the welcome sign.